

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION

MARION SEAY,	)	CIVIL ACTION NO. 3:04CV00001
	)	
Plaintiff,	)	
	)	
v.	)	<u>MEMORANDUM OPINION</u>
	)	<u>AND ORDER</u>
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	JUDGE JAMES H. MICHAEL, JR.

This case concerns an automobile accident which occurred on July 25, 2002, on Route 522 in Orange County. The plaintiff, Marion Seay, filed this action under the Federal Tort Claims Act, 28 U.S.C. § 2671, alleging that Gary Roberts, while delivering mail for the United States Postal Service, negligently operated his truck, causing a collision with Seay's vehicle. The plaintiff requests a judgment of \$50,000 for medical expenses, lost wages, and pain and suffering. A bench trial was held on November 17, 2004. Because the plaintiff's negligence contributed to the collision, the court finds that she is not entitled to any relief.

**TESTIMONY**

Both parties agreed that, immediately prior to the collision, the plaintiff was driving her Mercury automobile in a northerly direction on Route 522 (a two-lane road) about three-tenths of a mile north of Route 20 in Orange County, Virginia. Seay testified that when she first saw Roberts' Toyota pick-up truck, it was a few hundred yards ahead, fully stopped with its two right wheels off the road and on the shoulder. Seay believed that Roberts had pulled off the road there to service a nearby mailbox on the east side of Route 522. Seay testified that she

was traveling 50 to 55 miles per hour when she saw Roberts' truck. According to Seay, she then let her foot off the gas and moved into the southbound lane of Route 522 – a legal passing zone – in order to pass the truck. However, as she proceeded to pass, Roberts pulled out slowly across the northbound lane and into the southbound lane, at which point the front of Seay's car collided with Robert's pick-up, despite her attempt to move her car back into the northbound lane to avoid a crash. Seay testified that she saw the "US MAIL" sign on Roberts' truck, but that she did not see any signal lights.

Roberts testified that he has been a rural letter carrier with the U.S. Postal Service for 22 years. In July 2002, his route – which he had been delivering for 19 or 20 years – required him to serve mailboxes going north on Route 522, then deliver to a few boxes on a side road, and finally drive south on Route 522 in order to serve Mrs. Palmer at 9432 Zachary Taylor Highway (Route 522). He was using a 1993 Toyota pick-up truck with a roof-top sign reading "US MAIL." He testified – and his Exhibit 8 shows – that this sign was flanked by signal lights, which he said were operational on the day of the collision. On that day, according to Roberts, he had delivered mail to all the mailboxes on the northbound side of Route 522 and the side road, and he was returning southbound on Route 522. He testified that as he was passing Mrs. Palmer's house, he realized that he had forgotten to deliver her newspaper. He drove an eighth of a mile past her house, turned around, and drove north back toward Mrs. Palmer's house. He testified that he looked in his side mirror and saw no one behind him. About 370 feet from Mrs. Palmer's "lower" driveway, he signaled a left turn, at which time he

was going at most 30 miles per hour, according to his testimony.<sup>1</sup> As Roberts turned, he heard screeching tires, and as his two front wheels went off the pavement and onto Palmer's grass-covered driveway, his truck was hit in the left rear, driving the truck down an embankment, where it came to rest near a telephone pole. Roberts denied that he came to a full stop, or that he pulled his truck partly off the road to serve the mailbox across the road from Palmer's driveway, which he claimed he had already served earlier that day.

Jeremy Corbin, the tow-truck driver who towed Roberts' truck from the accident scene, testified that the left-turn signal to the left of Roberts' "US MAIL" sign was on when Corbin arrived.

### **FINDINGS OF FACT**

The evidence presented to the court does not allow it make its factual findings with a high degree of certainty. Most importantly, no police report – which would have provided a clearer picture of what happened – was admitted into evidence, although Seay testified that police did arrive at the scene. The court does have before it the often conflicting testimony of the two drivers involved, several photographs of the scene, and a diagram prepared by Roberts. While this evidence does not permit the court to be as certain as it would prefer, the following findings of fact represent what the court considers to be the most likely account of the collision based on the evidence submitted.

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<sup>1</sup> The exhibits show that Mrs. Palmer had two driveways, one just south of her house and one just north of her house. The accident occurred near the latter driveway, which Roberts called the "lower" driveway.

First, the court finds that, at the time of the collision, Roberts had already delivered mail to the mailboxes on the east side of Route 522. At the time of the accident, he was driving north on 522 because he had forgotten to deliver a newspaper to Mrs. Palmer at 9432 Zachary Taylor Highway. He slowed down to turn left into her lower driveway.<sup>2</sup> While the mailbox for 9431 Zachary Taylor Highway is across the street from (and about 20 feet north of) this driveway, Roberts did not pull over onto the right-hand shoulder in order to serve this mailbox, which he had already served earlier. He did not come to a full stop before the collision, although he was traveling much more slowly than Seay. At some point, he signaled a left turn. He never saw Seay before the collision, a fact which he admitted but for which he could not provide an explanation.<sup>3</sup>

Seay wrongly concluded that Roberts had stopped to deliver mail, a deduction probably caused by three observations. First, Roberts' truck bore a "US MAIL" sign. Second, she saw a mailbox just ahead of the truck on the right side of the road. Third, she was quickly catching up to Roberts' truck. In addition, Seay testified that she has often seen mail trucks pull over to deliver mail, an experience which may have influenced her mistaken assumption in this case.

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<sup>2</sup> Although Palmer apparently told Seay that the lower, grass-covered driveway had not been used in years, there is no reason Roberts could not have parked his truck in this driveway while delivering Palmer's mail. Also, the entrance to the driveway is still marked by a white stake, and a photograph shows tire tracks at the beginning of the driveway, indicating at least occasional usage. (*See* plaintiff's Exhibit 8).

<sup>3</sup> Several photographs show that the section of Route 522 south of the accident site is somewhat hilly, which suggests the possibility that Seay's car was in a dip in the road – and out of sight – at the moment Roberts looked in his mirror.

Seay failed to see Roberts' left turn signal. While it is possible that Roberts did not turn on his indicator until it was too late, he testified that he turned it on well before reaching Palmer's driveway. In any case, believing Roberts had stopped and pulled over, Seay decided to pass him, and she moved into the southbound lane. She let her foot off the accelerator, although she did not brake until she saw Roberts pull out. The photographs of the damage to both cars and of the skidmarks left by her car show that she was still traveling at a high rate of speed when she struck Roberts' truck, although there is no evidence she was exceeding the speed limit. Upon seeing Roberts turn in front of her, she attempted to move back into the northbound lane, and she applied her brakes. The front of her car struck the left rear of Roberts' truck, causing it to spin so that its rear ended up by a telephone pole just north of the driveway, with the truck facing the road. Seay's vehicle came to a stop in the road, at a point slightly farther north, her wheels straddling the center line.

There is no dispute that Ms. Seay suffered the injuries that she describes and as outlined in the deposition of Dr. Nancy Schmitz.

Since Seay and Roberts were both generally credible witnesses, the foregoing factual findings attempt to reconcile their testimony to the extent possible. The court's findings are consistent with its conclusion that both witnesses honestly recounted their memories of the incident. For the plaintiff to prevail, the court would have to find that Roberts falsely claimed that he had not pulled over to serve a mailbox, but rather was making a left turn. The court finds it much more likely that the conflicts in their testimony are attributable to the incorrect presumptions made by Seay, as described above.

## CONCLUSIONS OF LAW

The defendant argues that the plaintiff's own contributory negligence bars her recovery. The defendant bears the burden of proving the affirmative defense of contributory negligence by a preponderance of the evidence. *See Sawyer v. Commerci*, 264 Va. 68, 75, 563 S.E.2d 748, 752 (2002). "Contributory negligence is nothing more than the failure of plaintiff to exercise ordinary care for his own safety, which, together with the negligence of another, brings about injury to him. If a plaintiff's failure to exercise due care helps to bring about or cause the injury to himself, he cannot recover from another whose negligence co-operated or concurred with his own neglect to produce the injury." *Yearly v. Holbrook*, 171 Va. 266, 285, 198 S.E. 441, 450 (1938); *see also Sawyer*, 264 Va. at 74-75, 563 S.E.2d at 752 ("the essence of contributory negligence is carelessness"). A driver must use ordinary care to keep a proper lookout, keep her vehicle under proper control, and drive at a reasonable speed under the existing conditions. *See, e.g., Todt v. Shaw*, 223 Va. 123, 286 S.E.2d 211 (1982). The duty to keep a proper lookout requires a driver to use ordinary care to look for other vehicles that would affect her driving, to see what a reasonable person would have seen, and to react as a reasonable person would have acted to avoid a collision under the circumstances. *See, e.g., Matthews v. Hicks*, 197 Va. 112, 115, 87 S.E.2d 629 (1955).

The plaintiff in this case, Marion Seay, operated her vehicle in a negligent manner. She failed to keep a proper lookout, falsely and rashly concluding that Roberts was fully stopped and had pulled his truck partly onto the shoulder to serve a mailbox. Although Seay's mistake

was explainable, it was nonetheless unreasonable. She operated her vehicle carelessly, unwisely attempting to pass Roberts at a relatively high speed, and crashing into him when he made his left turn. Even if Roberts *had* pulled over and stopped, Seay may have been driving at an unreasonable speed in attempting to pass. Seay's injuries were, at least in part,<sup>4</sup> caused by her own negligence. She is therefore barred from recovering any damages for the injuries she sustained as a result of the collision.

It is accordingly this day

ADJUDGED, ORDERED, and DECREED

that the plaintiff's request for relief is hereby DENIED.

The Clerk of the Court hereby is directed to send a certified copy of this Order to all counsel of record.

ENTERED:

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Senior United States District Judge

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Date

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<sup>4</sup> It is not necessary for the court to decide whether Roberts was negligent, and it declines to do so.